

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, July 10, 2009

PRESENT:

Gordon Turriff, QC, President	Jan Lindsay
Glen Ridgway, QC, 1 st Vice-President	David Mossop, QC
Gavin Hume, QC, 2 nd Vice-President	Thelma O'Grady
Haydn Acheson	Peter Lloyd
Kathryn Berge, QC	David Renwick, QC
Joost Blom, QC	Meg Shaw, QC
Robert Brun, QC	Richard Stewart, QC
Leon Getz, QC	Ronald Tindale
Carol Hickman	Art Vertlieb, QC
William Jackson	Herman Van Ommen
Terence La Liberté, QC	James Vilvang, QC
Bruce LeRose, QC	Kenneth Walker
Barbara Levesque	Dr. Maelor Vallance

ABSENT:

Rita Andreone	Stacy Kuiack
Patrick Kelly	David Zacks, QC

STAFF PRESENT:

Tim McGee	Cara McGregor
Michael Bernard	Bill McIntosh
Barbara Buchanan	Jeanette McPhee
Stuart Cameron	Doug Munro
Lance Cooke	Susanna Tam
Su Forbes, QC	Alan Treleaven
Jeffrey Hoskins, QC	Adam Whitcombe
Howard Kushner	Carmel Wiseman
Michael Lucas	

GUESTS:

Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, LSS
Johanne Blenkin, Executive Director, BCCLS
Ron Friesen, Acting-Executive Director, CLEBC
Robert Holmes, President, Trial Lawyers Associations of BC
Jamie Maclaren, Executive Director, Pro Bono Law of BC
Caroline Nevin, Executive Director, CBABC
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Kerry Simmons, Young Lawyers Representative, CBABC

CONSENT AGENDA

Minutes

1. The minutes of the meeting held on June 13, 2009 were approved as circulated.

Consent Resolutions

The following resolutions were **passed unanimously and by consent**.

2. ***BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-33(a) and substituting the following:***
 - (a) the claimant has made a claim under Part B of the policy of professional liability insurance and the claim has been denied in whole because
 - (i) the limit of liability described in the policy as the Profession-Wide Aggregate Limit has been exhausted, or
 - (ii) a lawyer or the claimant knew or reasonably ought to have known of circumstances that could form or did form the basis of a claim for compensation prior to May 1, 2004, or
3. ***BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-56(3.1)(a).***
4. ***BE IT RESOLVED to re-appoint David Crossin, QC and to appoint Thomas Christensen to the Board of Directors of the Legal Services Society, each for a two-year term commencing September 7, 2009 and ending September 6, 2011.***

REGULAR AGENDA – for Discussion and Decision

5. **President's Report**

Mr. Turriff opened the meeting by applauding the recent appointment of the Honourable Mr. Justice Robert Punnnett to the BC Supreme Court and noting that while Mr. Justice Punnnett will be sorely missed at the Bencher table, he will be a great asset to all British Columbians. Mr. Turriff thanked several Benchers for agreeing to take on the former Prince Rupert County Bencher's Committee responsibilities: David Mossop, QC as Chair of the Access to Legal Services Advisory Committee, Ken Walker as Vice-Chair of the Discipline Committee and Ron Tindale as the Law Society's representative on the CBABC Rural Education and Access for Lawyers Initiative Oversight Committee.

Mr. Turriff updated the Benchers on plans for his trip to Perth, Australia in September to attend the annual conference of Australia's 55 legal regulatory bodies, where he will participate in a panel discussion on legal regulation and deliver a keynote address. Mr. Turriff said that his speech — to be called "Self-governance as a Necessary Condition of Constitutionally Mandated Lawyer Independence in British Columbia" — will be a variation on his 125th Anniversary President's Speaking Tour address. Immediately following the regulators' conference, Mr. Turriff will attend the Australian Legal Conference (also in Perth) to participate in a panel discussion on the Rule of Law.

Mr. Turriff expressed his appreciation to the Honourable Michael de Jong for the thoroughness of his communications with Law Society leadership in the early days of his tenure as BC's Attorney General.

Mr. Turriff thanked several Benchers for their assistance in recent weeks: Mr. LeRose, for filling in for him at the swearing-in ceremony for Provincial Court Judge Lisa Mrozinski in Nelson; Ms. Berge, for attending a memorial reception for Mr. Justice McIntyre in Victoria; Ms. Berge, Mr. Kuiack, Mr. Ridgway and Mr. Stewart for attending with him at a Law Society-sponsored reception for a Federation of Law Societies Criminal Law program in Victoria. Mr. Turriff spoke at the opening session of that program, which he noted was a very high quality CPD program on evidence and criminal procedure, attended by 627 lawyers from across Canada.

6. CEO's Report

Mr. McGee introduced the 2010 Fees and Budgets agenda item, noting that a detailed presentation by Finance Committee Chair Glen Ridgway, QC would follow. Mr. McGee advised that the Finance Committee's report followed a three-month planning and review process, culminating in recommendations based on balanced budgets, no use of reserves and sufficient funding for the proper discharge of our core regulatory mandate. Mr. McGee noted that the recommendations pay particular attention to the challenges of funding the Trust Administration Program (TAP) through the real estate transaction-based Trust Administration Fee (TAF) in the current turbulent economic conditions.

Mr. McGee provided the Benchers with a progress report on implementation of the Law Society's 2009-2011 Strategic Plan.

He noted that work is either underway, getting underway or completed on all of the strategies and 16 of 18 of the implementation initiatives set out in the plan, referring the Benchers to Appendix 1 in his written report for details.

Mr. McGee introduced the Benchers to the Law Society's Human Resources Strategic Plan for the same three-year period (Appendix 2 of his written report). He defined the plan's two broad goals:

- The Law Society as an Employer of Choice
- HR as a resource/service centre for management and employees

Mr. McGee described the core strategy as transforming the Law Society's HR department from a personnel problem-solving unit to a skill development resource centre. He briefed the Benchers on the positive staff response to the work skills program launched in 2008, and outlined the 10-month leadership skills program being developed for all Law Society managers, to be launched this fall.

Mr. McGee briefed the Benchers on the early progress of the Law Society's Green.Wise Initiative and its Steering Committee (made up entirely of staff volunteers). He noted that in less than two months of operation, the committee has:

- Adopted its mission statement – *Green.Wise promotes environmental awareness, change and responsibility*
- set up a website for idea generation and exchange

- identified a new and efficient process for disposing of used coffee packaging

Mr. McGee also welcomed Lance Cooke as the Policy & Legal Services Department's new staff lawyer. Previously a staff lawyer in the Professional Conduct Department, Mr. Cooke also brings valuable private practice experience to his new role. He won his new job by prevailing over more than 30 outside candidates.

7. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

REGULAR AGENDA – Matters for Discussion and/or Decision

8. 2010 Fee Recommendations

Finance Committee Chair Glen Ridgway, QC briefed the Benchers on the committee's recommendations for 2010 fees. He noted the following highlights:

- No practice fee increase for 2010 (remaining at \$1,633.50)
- Decrease of \$100 over last year for non-insured lawyers
- Special Compensation Fund assessment reduced \$50, \$100 less than 2009. The fourth reduction in four years with an even lower assessment expected for 2011
- Lawyers Insurance Fund assessment increase to \$1,600; first increase since 1993
- A balanced budget with no use of reserves for a fourth year

Mr. Ridgway advised the Benchers that current market conditions and 2010 projections indicate that trust administration fee revenue will likely not cover the cost of the Law Society's trust assurance program in 2010. Without an unexpected increase in trust transactions on which the trust administration fee is payable, it is likely that some increase in the trust administration fee will be necessary in 2010.

Mr. Ridgway expressed his appreciation to Benchers Acheson, Andreone, Jackson and Lloyd for their attendance at a recent 2010 Financial Overview briefing session.

Mr. Ridgway moved (seconded by Mr. LeRose) that the Benchers approve the following practice fee resolution:

Be it resolved that:

The Benchers recommend to the members at the 2009 Annual General Meeting a practice fee of \$1,633.50 commencing January 1, 2010, consisting of the following amounts:

General Fund	\$1320.04
Federation of Law Societies	\$20.00
CanLII	\$30.74
Pro Bono Contribution	\$13.22
BCCLS	\$166.00
LAP	\$56.00
Advocate	<u>\$27.50</u>
Practice Fee	\$1,633.50

The motion was carried.

Mr. Ridgway moved (seconded by Mr. LeRose) that the Benchers approve the following insurance fee resolution:

Be it resolved that:

- the insurance fee for 2010 pursuant to section 30(3) of the Legal Profession Act be fixed at \$1,600
- the part-time insurance fee for 2010 pursuant to Rule 3-22(2) be fixed at \$800
- the insurance surcharge for 2010 pursuant to Rule 3-26(2) be fixed at \$1,000

The motion was carried.

Mr. Ridgway moved (seconded by Mr. LeRose) that the Benchers approve the following Special Compensation Fund assessment:

Be it resolved that:

- the Special Compensation Fund Assessment for 2010 be set at \$50.00

The motion was carried.

STRATEGIC PLANNING AND PRIORITIES MATTERS – for Discussion and/or Decision

9. Final Report from the Retention of Women in Law Task Force

Task Force Chair Kathryn Berge, QC led the presentation of the task force report, with contributions from task force members Jennifer Conkie, QC, Anne Giardini, Gavin Hume, QC, Jan Lindsay, Maria Morellato, QC and Richard Stewart, QC. Ms. Berge briefed the Benchers on the task force's five recommendations, summarized in the task force report (p. 911 of the meeting materials) as:

1. Adopt, Publish and Promote the Business Case;
2. Task the Equity and Diversity Advisory Committee with Monitoring and Promoting Existing Law Society Programs and Resources;
3. Enhance Existing Law Society Programs;

4. Consider the Feasibility of Creating a BC Think Tank for Regional/Mid-Size and Smaller Firms; and
5. Consider the Feasibility of Additional Law Society Programs.

After a full discussion, during which many Benchers expressed their support for the task force report and its recommendations, Mr. Hume moved (seconded by Ms. Hickman) that the Benchers adopt and publish The Business Case for Retaining and Advancing Women in Private Practice in BC as the Law Society's business case and promote it to the profession and to the media.

There was discussion of whether all or any of the recommendations would need to be amended to permit the Law Society to examine whether the Society's current Rules present barriers to retention of women in law. The Benchers agreed that no such amendment was necessary.

The Benchers also agreed that Mr. Hume's motion should be read as calling on the Benchers to approve task force recommendations 2 and 3 (as set out on pages 908 and 909, respectively, of the meeting materials), along with recommendation 1.

The motion was carried.

Mr. Hume then moved (seconded by Ms. Hickman) that the Benchers approve task force recommendations 4 and 5 (as set out on pages 909 and 910, respectively, of the meeting materials)

The motion was carried.

The Benchers then referred recommendations 4 and 5 to the Executive Committee for consideration of their resource requirements, assessment of their feasibility, and determination of the strategic planning implications of their implementation.

Ms. Berge thanked Susanna Tam for her diligence and dedication as the task force's staff liaison, and Michael Lucas for his support with policy analysis, particularly regarding the framing of the task force's recommendations.

10. Report from the Access to Legal Services Advisory Committee

Committee Chair David Mossop, QC presented the Access to Legal Services Advisory Committee's mid-year report to the Benchers. Mr. Mossop reported that in the first half of 2009, the committee focused on the ability of the poor to access legal services, and that in the balance of the year, it will focus on the legal needs of middle and low income people, while continuing to monitor pro bono.

The Committee's report asks "What can the Law Society do to enhance pro bono?" and positions its analysis of *pro bono* in the context of supporting the Benchers' strategic goal of reducing financial barriers to accessing justice. At pages 1003-1004 of the meeting materials, the report identifies five issues (the Five Issues) and calls for their further consideration and communication as modest but meaningful steps the Law Society can take to improve participation in, and delivery of, *pro bono* in BC:

Issue 1: The Benchers should direct the Credentials Committee to consider whether the articling program should be modified to *encourage* articling students to provide a minimum of 10

hours of *pro bono* (either at a clinic or through their firm), and to *require* the articling student and his or her principal to report the total number of hours of *pro bono* provided by the student during articles.

- Issue 2:** The Benchers should direct the Lawyers Education Advisory Committee to consider whether lawyers who provide *pro bono* through clinic and roster programs should be able to claim a portion of that time towards the ethics / professional responsibility component of Continuing Professional Development (“CPD”). Because CPD requires a lawyer to spend *at least* two hours a year on matters of ethics and professional responsibility, the Lawyers Education Advisory Committee should consider whether there is a need to limit how many of the 12 hours of CPD may be met by providing *pro bono*.
- Issue 3:** Gordon Turriff, Q.C., on behalf of the Law Society, should write a letter encouraging law schools and PLTC to consider how to increase the course content on ethics and professional responsibility, with emphasis on the duties a lawyer owes to clients and the court, including finding ways to educate students in the theoretical and practical aspects of poverty law.
- Issue 4:** The Benchers should direct the Finance Committee to consider whether, and if so how, the Law Society should increase funding to *pro bono* in British Columbia. The Finance Committee might wish to liaise with the Law Foundation, Access Justice, Pro Bono Law BC, and the Salvation Army to ascertain whether they can, under their present funding, support the increased *pro bono* participation that might arise if the Law Society puts into effect the other programs and policies identified in this report.
- Issue 5:** Gordon Turriff, Q.C., on behalf of the Law Society, should write a letter to the key legal education service providers in British Columbia, advising them of the adoption of the Unbundling Report and encouraging them to create course content to assist lawyers in delivering limited scope legal services.

Mr. Mossop moved (seconded by Mr. Vilvang) that the Five Issues be approved as a Bencher resolution for consideration and action in accordance with their terms.

A broad discussion followed, during which several Benchers expressed their support for the committee’s work and its report. Some Benchers voiced concern regard the imposition of *pro bono* requirements as articling or practice conditions. Other Benchers expressed reservation about the risk that government may construe Law Society support for *pro bono* legal services as a rationale for reducing government support for legal aid.

Mr. Getz moved (seconded by Ms. Levesque) that the Mossop motion be amended to add a sixth issue:

- Issue 6:** the Ethics Committee should be directed to consider whether doing *pro bono* work is an ethical obligation for lawyers, and if so, whether the Rules and *Professional Conduct Handbook* need revision.

The Getz amendment was carried, and the Mossop motion was carried as amended.

11. Interim Report from the Delivery of Legal Services Task Force

Task Force Chair Art Vertlieb, QC reviewed the progress of the survey being administered by Ipsos Reid over the summer and advised that the task force expects to provide the Benchers with a report and recommendations in the fall.

12. Ethics Committee Report: Policy for Regulating Multi-Disciplinary Partnerships

Ethics Committee Chair Gavin Hume, QC briefed the Benchers on their previous consideration of regulating MDPs in 2001 and 2007, and presented the Committee's recommendation that the Benchers decide in principle that the Law Society should regulate MDPs on the narrow LSUC model. He noted that the LSUC model has three key elements:

- Practising lawyers must have actual control over the delivery of legal services by the multi-disciplinary practice
- The services provided by non-lawyers must support or supplement the practice of law, and must be offered only to the clients of the law partnership or association
- Non-lawyers must be of good character and agree to comply with all relevant legislation governing lawyers and their conduct

Mr. Hume moved (seconded by Mr. Blom) that the Benchers decide in principle to permit multi-disciplinary partnership on the Ontario model, subject to the preparation of draft Rules by the Ethics Committee to ensure that important values of the legal profession are not compromised.

A discussion followed, focused on professional liability insurance issues related to coverage of non-lawyer members of law firms. A 'friendly amendment' of the Hume motion ensued, directing the Ethics Committee to include liability insurance issues in its consideration of draft Rules for regulation of multi-disciplinary partnerships by the Law Society.

The motion was carried as amended.

13. Policy for Publication of Anonymous Discipline Decisions

Discipline Committee Chair Art Vertlieb, QC outlined the issues underlying Law Society Rule 4-38.1, regarding the publication of anonymous discipline decisions. He referred the Benchers to a report prepared by Staff Lawyer Carmel Wiseman for review of the rule's background, case law, recent legislation and options.

A full discussion followed. Some Benchers argued strongly in favour of complete transparency and a rule calling for publication in all cases except where third parties or complainants may be prejudiced. Other Benchers expressed the view that publication is a form of punishment in itself, and that hearing panels should have the discretion to withhold publication or direct anonymous publication in appropriate cases. Still others stressed the paramountcy of public interest considerations, arguing that publication policy and decision-making should not be made or influenced by any balancing of the interests of complainants, lawyers and the public.

Mr. Ridgway moved (seconded by Mr. Van Ommen) that Rule 4-38.1 be amended to provide that anonymous publication of Law Society discipline decisions be permitted only in circumstances where identification would cause harm to the complainant or a third party.

The motion was carried.

14. Possible Amendments to the *Legal Profession Act*

Act and Rules Subcommittee Chair Leon Getz, QC briefed the Benchers on the Executive Committee's recommendations for two groups of proposed amendments to the *Legal Profession Act*. The first group comprises a package five relatively minor and non-controversial changes, to be introduced to the Legislature in a miscellaneous statute amendment bill in the spring of 2010:

- changing "Lay Benchers" in section 5 to "Appointed Benchers"
- removing reference to collection of CBA fees from section 24
- amending sections 36 and 38 to allow the Benchers to make Rules setting the maximum fine in disciplinary matters
- amending section 38 to allow a discipline panel to impose a suspension pending compliance with a condition imposed in the same matter
- amending section 47 to allow the Benchers to review a hearing panel's award of costs

The second group of matters (set out on pages 1405-1413 of the meeting materials) is to be referred to the Act and Rules Subcommittee for review and preparation of a package of amendment requests. That second package is to be approved by the Benchers and then submitted to the Legislature at the first opportunity in 2011 or thereafter.

Mr. Getz moved (seconded by Mr. Vertlieb) that the Benchers adopt the two resolutions set out at page 1404 of the meeting materials:

1. *Be it resolved:*

- to request the following amendments to the Legal Profession Act for enactment at the next opportunity:
 - (a) changing "Lay Benchers" in section 5 to "Appointed Benchers";
 - (b) removing reference to collection of CBA fees from section 24;
 - (c) amending sections 36 and 38 to allow the Benchers to make Rules setting the maximum fine in disciplinary matters;
 - (d) amending section 38 to allow a discipline panel to impose a suspension pending compliance with a condition imposed in the same matter; and
 - (e) amending section 47 to allow the Benchers to review a hearing panel's award of costs.

2. *Be it resolved:*

- to refer to the Act and Rules Subcommittee the list of possible amendments to the *Legal Profession Act* (as set out on pages 1405-1413 of the meeting materials).

A 'friendly amendment' (Getz/Van Ommen) followed, to exclude the matter of the Law Society's statutory mandate (page 1406 of the meeting materials) from the list of possible amendments to the *Legal Profession Act* to be referred the Act and Rules Subcommittee, and to direct the Independence and Self-governance Committee to consider that matter and bring it to the Benchers table with recommendations for discussion in the fall.

The motion was carried as amended.

IN CAMERA SESSION

15. Discussion of Benchers Concerns

This matter was discussed *in camera*.

WKM

2009-08-10